IN THE

Supreme Court of the United States.

OCTOBER TERM, 1950.

No. 419.

MAMIE DuBAN, INDIVIDUALLY, AND AS EXECUTRIX OF THE ESTATE OF ALFRED A. DuBAN, DECEASED AND HARRY J. ALKER, JR.,

Petitioners and Appellants Below,

v.

FEDERAL DEPOSIT INSURANCE CORPORATION,

Respondent and Appellee Below.

PETITION FOR REHEARING.

To the Honorable Chief Justice and Associate Justices of the Supreme Court of the United States:

Your petitioners, Mamie DuBan, Individually, and as Executrix of the Estate of Alfred A. DuBan, deceased, and Harry J. Alker, Jr., pray that this Court re-hear and reconsider its denial of the petitioners' petition for the issuance of a writ of certiorari to review the decisions of the United States Court of Appeals for the Third Circuit in the above entitled case.

On November 24, 1950, your petitioners filed with your Honorable Court a petition for writ of certiorari to the Court of Appeals of the United States for the Third Circuit.

The Respondent filed its brief in opposition with your Honorable Court on December 28, 1950.

Your petitioners filed their reply brief with your Honorable Court on Saturday, January 6, 1951, shortly before noon.

On Monday, January 8, 1951, between 12 o'clock noon and 1 o'clock P. M., a telegram was received by the petitioners advising that the petition had been denied.

The history of the case, the questions presented, the statutes and law involved, the specifications of errors and the reasons for granting the writ are all set forth in the petition for certiorari and brief in support thereof to which reference is made, and will not be repeated here.

GROUNDS FOR GRANTING THE PETITION.

Your petitioners feel that a serious error has been made by your Honorable Court in so hastily refusing the certiorari, and submit

(1) That the United States Court of Appeals for the Third Circuit has decided an important federal question contrary to those in which the United States Court of Appeals for the Second and Eighth Circuits have decided the same question, and there thus is a conflict of the Circuits on the important question as to whether a second Judge whose jurisdiction is coordinate with that of the first Judge has the right to make an order in a matter which will in effect vacate an order of the first Judge.

(2) That the United States Court of Appeals for the Third Circuit has ratified a decree entered by one Judge of the United States District Court for the Eastern District of Pennsylvania, which decree constitutes an interference by said Judge in a case which was the case of another Judge of the same Court while said other Judge was absent from the country.

(3) That the said decree purported to dismiss all motions for a new trial in the matter, when the record clearly showed that the Trial Judge had granted the motion for new trial, and there was, therefore, no motion for new trial pending; the decree appealed from not stating that it va-

cated any order and thereby only applying to any then pending motions (of which there were none).

(4) That the United States Court of Appeals for the Third Circuit has not based its decision on the record of the District Court before it for review but has based it on matters not appearing in the record, which petitioners contend under the law it had no right to do; the decision thus being in conflict with decisions in like matters by other circuits and contrary to decisions by your Honorable Court. The Court of Appeals has relied in its opinion on an answer filed in the Court of Appeals by the District Court in its number 8805, which is different from the present case numbers to which certiorari is now sought. The attached statement by the clerk of the District Court shows that the answer was never a part of the entire record as certified to the Court of Appeals. This raises a very serious and important federal question. If this decision of the Court of Appeals is permitted to stand, then no Court in the future will be required to decide a case on the record before it, but will be allowed to go into all kinds of matters extraneous to the record.

(5) That attached hereto as "Exhibit A" is a statement by the Clerk of the District Court for the Eastern District of Pennsylvania, to the effect that no answer was filed of record by Judge Welsh in the District Court in Number 3047. It is this record of the District Court that was up for review by the Court of Appeals. It is the same record to which certiorari was sought. This statement establishes beyond doubt that the Court of Appeals in its decision relied upon matters outside the record of the case before it contrary to the principles established many years ago by this Court.

(6) This petition for re-hearing is filed not only because of the above mentioned important and fundamental federal questions involved in this case, but also due to the fact that the petitioners' reply brief was filed with your Honorable Court on Saturday, January 6, 1951, about 11:45 A. M., and on Monday, January 8, 1951, shortly after 1

o'clock, P. M., your petitioners received a telegram from the Clerk of the Court sent from Washington, D. C., bearing time stamp 12:42 P. M., stating that the petition for certiorari had been denied. Your petitioners feel, therefore, that your Honorable Court either did not have sufficient time in which to study carefully the matters set forth in petitioners' reply brief because of the short length of time between the filing of the reply brief and the notice as signed by the Clerk of the Court; or your Honorable Court inadvertently did not see all the papers in the matter at all.

WHEREFORE petitioners pray that your Honorable Court grant a re-hearing in the above matter and that the judgments of the Court of Appeals for the Third Circuit in #10,002 and 10,120 may be reversed.

MAMIE DUBAN,
Individually and as Executrix of the Estate of Alfred A. DuBan, Decd., and

HARRY J. ALKER, JR.,
Petitioners.

A. D. BRUCE,

EDWIN HALL, 2ND,

HARRY J. ALKER, JR.,
Attorneys for Petitioners.

We hereby certify that this petition is presented in good faith and not for delay, and is confined to intervening circumstances of substantial or controlling effect or to other substantial grounds available to petitioners although not previously presented.

A. D. BRUCE,

EDWIN HALL, 2ND,

HARRY J. ALKER, JR.,
Attorneys for Petitioners.

CLERK'S OFFICE

DISTRICT COURT UNITED STATES

EASTERN DISTRICT OF PENNSYLVANIA

PHILADELPHIA 7

January 15, 1951.

Harry J. Alker, Jr, Esq.,
1505 Land Title Building,
Phila. 10, Pa.

Dear Mr. Alker:

Replying to your letter of January 15, 1951, re: Federal Deposit Insurance Corp. vs. Harry J. Alker, Jr., et al, Civil Action No. 3047, please be advised that an inspection of the docket does not disclose the filing of an answer by Hon. George A. Welsh to a writ of prohibition and mandamus, or any other answer by him.

Very truly yours,

George Brodbeck

GEORGE BRODBECK,
Clerk.

Exhibit A

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